

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
SHERMAN DIVISION**

**JEFFREY A. BENDER,  
PLAINTIFF,**

**v.**

**PAUL H. FENIMORE, CHARLOTTE E.  
MCLARRY, AS REPRESENTATIVE OF  
THE ESTATE OF GARY K. MCLARRY,  
and HOPKINS COUNTY, TEXAS,  
DEFENDANTS.**

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**CIVIL ACTION NO. 4:12CV00245  
JURY DEMANDED**

**DEFENDANTS' AMENDED MOTION IN LIMINE**

TO THE HONORABLE JUDGE OF SAID COURT:

COME NOW Defendants Hopkins County, Texas, and Paul Fenimore ("Defendants") and file this their Amended Motion in Limine, and in support thereof would respectfully show unto this honorable Court the following:

**I.**

Matters discussed in the following paragraphs are not relevant under FED. R. EVID. 401, are prejudicial and misleading under Rule 403, and incompetent to any of the material issues in this cause. The injection of such matters into the trial of this cause by any party, attorney, or witness could cause irreparable harm to Defendants, which no instruction by the Court to the jury could cure. Defendants therefore move the Court to instruct and order all attorneys in this cause, and all witnesses which they may place upon the stand, not to mention, argue or make any statements or reference to the following matters within the hearing of a juror or the jury panel without first obtaining the Court's express permission and authority to do so. Defendants also request that the Court instruct and order Plaintiff

and Plaintiff's witnesses, not to read any pleadings or documents concerning such matters without such prior permission of the Court.

The following matters would not be admissible for any purpose and should be excluded from any mention or reference herein:

1. Plaintiff should not be permitted to offer evidence regarding whether or not Hopkins County, Texas, its present and former employees, elected officials and officers are or are not covered by insurance, or are otherwise protected by any bond, contract, risk management agreement, or other form of indemnity agreement, or to infer that insurance coverage, if any, is a factor in this case. Rule 411, F.R.E.

Plaintiff has agreed to not address the issue of whether Defendants are insured, unless and to the extent that Defendants do not assert financial constraints or inability to pay a judgment upon a jury rendering a verdict for Plaintiff.

2. Any questions asked of the jury panel, or any individual jurors, as to whether or not they have any connection with the insurance industry.

Plaintiff has agreed to not inquire as to jurors' possible connection with the insurance industry unless otherwise indicated by a juror as relevant to her or his employment or source of income.

3. Introducing or attempting to introduce into evidence any testimony or documents related to or regarding any lawsuits or other types of claims, accusations, charges, inquiries or investigations, which have in the past been filed or made or conducted, or are presently pending against Defendants Paul Fenimore and/or Hopkins County, Sheriff Butch Adams, Lewis Tatum, Gary McLarry or the Hopkins County Sheriff's Office, or its present and former employees or elected officials, for the reason that such matters would be wholly irrelevant to any issue in this case and would be mentioned to the jury solely for the purpose of prejudicing the jury by the existence of collateral matters, the matters of which could not possibly be litigated in this lawsuit. The existence of any such suits, claims, or accusations would be meaningless, irrelevant and immaterial to any issue in this case, and the allegations of claimants in such suits would be hearsay. In addition, such matters would be referred to only for the purpose of prejudicing the jury rather than bringing forth admissible evidence.

GRANTED \_\_\_\_\_ DENIED \_\_\_\_\_

4. Introducing or attempting to introduce into evidence any testimony relating to medical or psychological damages he claims to have suffered since Defendants requested documents relating to same, and Plaintiff Jeff Bender refused to produce same.

GRANTED\_\_\_\_\_ DENIED\_\_\_\_\_

5. Any and all unsubstantiated claims of alleged unconstitutional action or other alleged bad acts by Defendants Paul Fenimore, Gary McLarry and/or Hopkins County, Sheriff Butch Adams or the Hopkins County Sheriff's Office or its present and former employees or elected officials.

GRANTED\_\_\_\_\_ DENIED\_\_\_\_\_

6. Any statements relating to Defendant Paul Fenimore not being qualified to make decisions in the course and scope of his employment as a law enforcement officer.

GRANTED\_\_\_\_\_ DENIED\_\_\_\_\_

7. Any reference to the property where Plaintiff was arrested as Plaintiff's Bender's home, house or residence.

GRANTED\_\_\_\_\_ DENIED\_\_\_\_\_

8. Any reference to any lawsuit settled between Plaintiff, Jody Bender, Hopkins County, Texas or any of its employees or officials.

GRANTED\_\_\_\_\_ DENIED\_\_\_\_\_

## II.

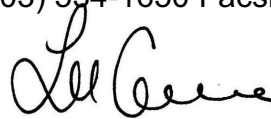
Alternatively, Defendants request the Court to require all Parties, their counsel and their witnesses to first bring up any of the foregoing matters with the Court, out of the presence of the jury or jury panel, so that the Court may determine the admissibility and relevance of such matters before they are injected into the case in the presence of a jury or jury panel.

WHEREFORE, PREMISES CONSIDERED, Defendants Hopkins County, Texas, and Paul Fenimore pray that the Court grant this Amended Motion in its entirety and that

the Court grant the protective relief sought by appropriate Order binding all Parties, their counsel and their witnesses.

Respectfully submitted,

**FLOWERS DAVIS, P.L.L.C.**  
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**ATTORNEY FOR DEFENDANTS  
HOPKINS COUNTY, TEXAS AND  
PAUL FENIMORE**

**CERTIFICATE OF SERVICE**

I hereby certify that the above and foregoing instrument was served upon all counsel of record in the above entitled and numbered cause on December 29, 2016, in the following manner:

  X   Via ECF




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**Lee I. Correa**

**CERTIFICATE OF CONFERENCE**

I hereby certify that I have contacted Plaintiff's counsel as to this motion on December 30, 2016, and he is opposed to all paragraphs except numbers 1 and 2.

  
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**Lee I. Correa**